Supreme Court, U. S.
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APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1779

GEORGE D. OWEN,
Petitioner,

vs.

THE CITY OF INDEPENDENCE, MISSOURI, LYLE W. ALBERG, CITY MANAGER, RICHARD A. KING, MAYOR, CHARLES E. CORNELL, DR. RAY WILLIAMSON, DR. DUANE HOLDER, RAY A. HEADY, MITZI A. OVERMAN, AND E. LEE COMER, JR., MEMBERS OF THE COUNCIL OF THE CITY OF INDEPENDENCE, MISSOURI,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Petition for Certiorari Filed May 29, 1979
Certiorari Granted October 1, 1979

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APPENDIX

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

March 12, 1973 - Plaintiff Owen's original complaint filed in the U. S. District Court for the Western District of Missouri.

April 16, 1973 - Defendant's original answer filed.

December 19, 1974 - Plaintiff Owen's first amended complaint filed.

May 17, 1976 - Trial of action to the court commenced. At the close of the day's testimony, trial is continued until further order of court.

June 22, 1976 - Trial of action resumed. Case is submitted.

June 22, 1976 - Defendants' first amended answer filed.

June 25, 1976 - Findings of Fact, conclusions of law and final judgment for defendants filed by the court.

July 6, 1976 - Plaintiff's motion to amend findings of fact and conclusions of law and for additional findings and motion to vacate or amend judgment or in the alternative for a new trial filed.

July 9, 1976 - Order correcting clerical errors filed by the court.

August 2, 1976 - Orders denying plaintiff's motion to amend findings of fact and conclusions of law and for additional findings and motion to vacate or amend judgment or in the alternative for a new trial filed by the court.

August 25, 1976 - Plaintiff's notice of appeal filed.

September 8, 1976 - Defendant's notice of appeal filed.

August 15, 1977 - Original opinion and judgment of the Court of Appeals for the Eighth Circuit.

September 26, 1977 - Order of the Court of Appeals for the Eighth Circuit denying rehearing or rehearing en banc.

December 27, 1977 - Defendants' petition for writ of certiorari filed.

June 26, 1978 - Order of the Supreme Court of the United States granting certiorari, vacating the judgment and remanding the case to the United States Court of Ap-

peals for the Eighth Circuit for further consideration in light of *Monell v. Dept. of Social Services of the City of New York*, 436 U.S. 658 (1978) filed.

December 1, 1978 - Opinion on remand and judgment of the United States Court of Appeals for the Eighth Circuit filed.

January 29, 1979 - Petition for rehearing denied.

April 10, 1979 - Order of Mr. Justice Blackman extending until May 29, 1979 time for the filing of petition for writ of certiorari.

May 29, 1979 - Plaintiff's petition for writ of certiorari filed.

October 1, 1979 - Order granting plaintiff's petition for writ of certiorari filed.

PLAINTIFF'S FIRST AMENDED COMPLAINT, FILED DECEMBER 19, 1974

[Designated Record 002]

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

Civil Action No. 73 CV 138-W-3

GEORGE D. OWEN, 4343 Brentwood, Independence, Mo. 64055, Plaintiff,

vs.

THE CITY OF INDEPENDENCE, MISSOURI, a Missouri municipal corporation, City Hall, 103 North Main, Independence, Missouri,

LYLE W. ALBERG, City Manager of the City of Independence, City Hall, 103 North Main, Independence, Missouri,

PHIL K. WEEKS, Mayor of the City of Independence, City Hall, 103 North Main, Independence, Missouri,

and

WILLIAM A. McGRAW, LAUZON H. MAXWELL, ARTHUR W. LAMB, R. M. "RUDY" BONVILLE, MORRIS D. McQUINN, DR. EUGENE THEISS, Members of the Council of the City of Independence, Missouri, City Hall, 103 North Main, Independence, Missouri, Defendants.

FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT, PRELIMINARY AND PERMANENT INJUNCTION AND DAMAGES

Comes now the plaintiff and with leave of court granted, for his first amended complaint against the defendants, states:

JURISDICTION

1. This is a civil action seeking a declaratory judgment, injunctive relief and damages because of the deprivation, under color of state law, of plaintiff's rights, privileges and immunities under the United States Constitution. The jurisdiction of this court is involved pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343(3) and (4), 28 U.S.C. § 2201, 28 U.S.C. § 2202, 42 U.S.C. § 1981, 42 U.S.C. § 1983, and the First, Fifth and Fourteenth Amendments to the United States Constitution.

[Designated Record 003]

PARTIES

2. Plaintiff George D. Owen is a citizen of the United States and of the State of Missouri. Until unlawfully terminated he was the Chief of Police of the City of Independence, Missouri in good standing employed by defendant City.

3. Defendant City of Independence, Missouri (hereinafter called "City") is a municipal corporation organized and existing under the laws of the State of Missouri and operating under a charter duly adopted under the laws of Missouri, under which it operates a police department, the director of which is the Chief of Police.

4. Defendant Alberg is the duly appointed and acting City Manager and Chief Administrative Officer of said

City. Under Section 3.3(1) of the Charter of said City the City Manager has the authority to "appoint and when deemed necessary for the good of the service . . . remove all directors or heads of administrative departments."

5. Defendant Weeks is the duly elected and acting Mayor of the City of Independence and a member of the Council of said City.

6. Defendants McGraw, Maxwell, Lamb, Bonville, McQuinn and Theiss are the other duly elected and acting members of the City Council of said City. Under the Charter the Mayor is the presiding officer of the Council, the Council is the policy making body of the City, and the City Manager is responsible for implementing the policies of the Council.

7. All of the individual defendants are sued in their official capacities.

FACTS

8. Plaintiff was, until terminated, an employee of defendant City for over five years as the duly appointed Chief of Police and has performed all of his official duties in a highly satisfactory manner.

9. On or about April 18, 1972, plaintiff received written notice from defendant City Manager stating that his employment as Police Chief was "terminated under the provisions of Section 3.3(1) of the City Charter."

[Designated Record 004]

10. No other written reasons for the termination were given plaintiff, although specific reasons were requested in writing, nor was he granted a hearing, although also requested in writing.

11. Plaintiff claims that his employment was wrongfully terminated because of his exercise of constitutional rights of freedom of expression as guaranteed by the First Amendment to the Constitution of the United States in that he has frequently spoken out publicly as to the need of the Police Department for pay raises, more manpower and better facilities.

12. Plaintiff further claims that Section 3.3(1) of the Charter violates the First and Fourteenth Amendments to the United States Constitution in that the phrase "when deemed necessary for the good of the service" is unconstitutionally vague and overbroad in that its terms are so vague that men of common intelligence must necessarily guess at their meaning and differ as to their application and so overbroad that they are susceptible of sweeping and improper application.

13. Under Sections 3.1 and 3.28 of the Charter and personnel rules adopted by the Council, virtually all city employees including the City Manager have a right to reasons and a hearing prior to removal from office or employment. However these rights are denied the directors of administrative departments, including plaintiff, which denial is a violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, there being no compelling governmental reason for granting such rights to the City Manager and various other city employees, but denying them to plaintiff, creating an invidious discrimination and classification.

14. The failure of defendants to state constitutionally permissible reasons for termination of plaintiff's employment and the failure to grant plaintiff a hearing were denials of the right of procedural due process guaranteed under the Fourteenth Amendment.

15. Plaintiff is an experienced law enforcement officer, having served 30 years with the Kansas City Police Department in which he held the rank of a Major, prior to his employment as [Designated Record 005] Chief of Police of Independence. He has received numerous awards for his professional activities and public acclaim for building an efficient and effective Police Department.

16. Plaintiff's termination followed an audit and investigation of the Police Department and a secret report which was referred to the Grand Jury by the defendant councilmen and City Manager following public statements by then Councilman Paul L. Roberts falsely imputing illegal, wrongful or grossly inefficient activities to plaintiff. Although no action was taken by the Grand Jury the Council has failed to make public the results of the audit and investigation, thereby leaving a cloud or suspicion of misconduct over plaintiff's professional reputation, although he has not been formally charged with nor has he been guilty of any specific misconduct in office.

17. By the actions of defendants plaintiff has suffered loss of "liberty" and "property" as protected by the Fifth and Fourteenth Amendments. His termination without formal charges or hearing have left a cloud over his professional and personal reputation and damaged his community standing. Although he has made numerous applications for employment in the field of law enforcement he has been unable to gain such employment. Plaintiff's interest in his good name, reputation, honor and integrity are at stake and the actions of defendants have imposed upon him a stigma or disability which has foreclosed his freedom to take advantage of other employment opportunities.

18. Under the laws and decisions of the State of Missouri where a City Charter authorizes the removal

of an appointed officer for cause there is an implied requirement of proper notice to the officer, charges preferred and full opportunity for him to be heard, all of which rights have been denied plaintiff.

19. The defendants under color of state law have purposefully subjected plaintiff, a citizen of the United States, to deprivation of rights, privileges and immunities secured to him by the Constitution and laws of the United States.

[Designated Record 006]

20. The actions of defendants in terminating plaintiff's employment and failing and refusing to reemploy plaintiff were likewise arbitrary and capricious in that they are not based on any factual grounds relating to his professional competence or performance. Such actions therefore constitute a denial of substantive due process, guaranteed by the Fourteenth Amendment.

21. The actions of defendants have caused irreparable damage to plaintiff in that he has and will suffer loss of professional standing and reputation, inability to pursue his occupation as a police officer, loss of earnings and retirement and pension benefits, unless this Court grants appropriate relief.

22. Plaintiff has suffered and is threatened with, serious and irreparable harm and injury by reason of the acts of defendants.

23. He has no pain, adequate or complete remedy to redress these wrongs other than this complaint. He has exhausted all available administrative remedies.

24. Plaintiff's damages in this action exceed $10,000.00.

WHEREFORE, plaintiff prays for the following relief:

1. That this Court try and determine the issues and declare:

(a) That Section 3.3(1) of the Charter of the City of Independence, Missouri is void for vagueness and overbreath [sic] in violation of the First, Fifth and Fourteenth Amendments to the United States Constitution;

(b) That the failure and refusal of defendants to reemploy plaintiff is a violation of his constitutional right to freedom of speech;

(c) That the failure to provide plaintiff with written grounds for his termination and a hearing is a denial of his constitutional right to procedural due process;

(d) That the actions of defendants were arbitrary and capricious, in denial of substantive due process;

(e) That the provisions of the Charter of the City of Independence denying heads of department the rights to be given reasons for termination and the right to a hearing violate the Equal Protection Clause in that such rights are granted other city employees and there is no compelling governmental reason for making such an invidious classification;

[Designated Record 007]

(f) That plaintiff has suffered injury to constitutionally protected liberty and property rights by the actions of defendants.

2. That preliminary and permanent mandatory injunctions issue ordering defendants to reinstate plaintiff in his same capacity and position with back pay, full rights to normal salary increases, and retirement benefits.

3. That plaintiff be awarded such further actual damages as may be established on hearing, his reasonable attorney fees and costs incurred herein.

4. Such other orders and relief as the Court may deem proper.

(Signatures and Certificate Omitted
in Printing)

DEFENDANTS' FIRST AMENDED ANSWER, FILED JUNE 22, 1976

[Designated Record 037]

IN THE
UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

[Caption Omitted in Printing]

DEFENDANTS' FIRST AMENDED ANSWER

Come now defendants for their first amended answer to the plaintiff's first amended complaint and respectfully allege:

1. That defendants deny that this action arises under the Constitution of the United States and deny that there has been any threatened or actual deprivation, under color of state law, of any right, privilege, or immunity secured to the plaintiff by the Constitution of the United States.

2. That defendants deny the allegations contained in paragraph 1 of plaintiff's complaint.

3. That defendants admit, based upon information and belief, that plaintiff George D. Owen is a citizen of the United States and of the State of Missouri and that

plaintiff was the Chief of Police of the City of Independence, Missouri, employed by said City until terminated on or about April 18, 1972. The defendants specifically deny the remaining allegations in paragraph 2 of plaintiff's complaint.

4. That defendants admit the allegations contained in paragraph 3 of plaintiff's complaint.

5. That defendants admit the allegations contained in paragraph 4 of plaintiff's complaint.

6. That defendants admit that defendant Weeks was the duly elected and acting Mayor and a member of the City Council of Independence.

7. That defendants admit that defendants McGraw, Maxwell, Lamb, Bonville, McQuinn and Theiss were the duly elected and acting members of the City Council of the City. That defendants admit that the Mayor, the Council and the City Manager have such powers and duties as provided in the Charter of said City, including [Designated Record 038] those powers stated in Article 2 and Article 3 of said Charter.

8. That defendants admit the allegations contained in paragraph 7 of plaintiff's complaint.

9. That defendants admit that plaintiff was, until terminated, an employee of the defendant, City of Independence, Missouri, (hereinafter called "City") for over five years as the duly appointed Chief of Police. That defendants specifically deny the remaining allegations of paragraph 8 of the complaint.

10. That defendants admit the allegations contained in paragraph 9 of the complaint.

11. That defendants deny, based upon information and belief, the allegations contained in paragraph 10 of the complaint.

12. That defendants deny upon information and belief the allegations contained in paragraph 11 of the complaint.

13. That defendants deny upon information and belief the allegations contained in paragraph 12 of the complaint.

14. That defendants admit, based upon information and belief, that under Sections 3.1 and 3.28 of the Charter and Personnel Rules adopted by the Council, virtually all City employees including the City Manager have a right to reasons and a hearing prior to removal from office or employment. That defendants further admit that under said Charter and Personnel Rules these rights are denied the directors of administrative departments, including plaintiff. That defendants deny, based upon information and belief, the remaining allegations of paragraph 13 of the complaint.

15. That defendants deny upon information and belief the allegations contained in paragraph 14 of the complaint.

16. That defendants deny knowledge or information sufficient to say whether or not the allegations of paragraph 15 in the complaint are true or false.

17. That defendants admit the occurrence of an audit and an investigation of the Police Department prior to plaintiff's termination. That defendants admit the City Council recommended presentation of secret reports to the Grand Jury. That defendants admit that the Grand Jury returned a no true bill. That defendants admit that the Council has failed to make public the results [Designated Record 039] of the audit and investigation. That defendants deny upon information and belief the remaining allegations of paragraph 16 in the complaint.

18. That defendants deny upon information and belief the allegations contained in paragraph 17 of the complaint.

19. That defendants deny upon information and belief the allegations contained in paragraph 18 of the complaint.

20. That defendants deny the allegations contained in paragraph 19 of the complaint.

21. That defendants deny the allegations contained in paragraph 20 of the complaint.

22. That defendants deny the allegations contained in paragraph 21 of the complaint.

23. That defendants deny the allegations contained in paragraph 22 of the complaint.

24. That defendants deny the allegations contained in paragraph 23 of the complaint.

25. That defendants deny the allegations contained in paragraph 24 of the complaint.

As a first, separate and distinct defense to plaintiff's complaint, defendants allege:

26. That this court lacks jurisdiction over the subject matter raised in plaintiff's complaint.

As a second, separate and distinct defense to plaintiff's complaint, defendants allege:

27. That this court lacks jurisdiction under 28 U.S.C. 1331, §1343(3) and (4), 2201 and 2202; 42 U.S.C. §1981 and 1983, and the First, Fifth and Fourteenth Amendments to the Constitution of the United States. That plaintiff's damages in this action cannot exceed $10,000 for reason that:

(a) Defendants' Sixth Defense stated hereafter shows that plaintiff's claim for damages is, to a legal certainty, for less than $10,000.

(b) That plaintiff elected his remedy for damages when plaintiff filed his petition for damages in Owen v. Roberts and Alberg, Case No. 778,640 before the Honorable Forest Hanna in the Circuit Court of Jackson County, Missouri.

[Designated Record 040]

(c) The dismissal of Lyle W. Alberg from the above-stated cause of action is a release of these defendants from any liability for damages.

(d) Plaintiff's stipulation that all matters in the above petition for damages have been fully compromised and settled as to the defendant Paul Roberts operates as a release of these defendants.

(e) That the filing and prosecution of said petition for damages in state court estops plaintiff herein from claiming damages against these defendants.

As a third, separate and distinct defense to plaintiff's complaint, defendants allege:

28. That plaintiff's complaint fails to state a claim against defendants upon which relief can be granted.

As a fourth, separate and distinct defense to plaintiff's complaint, defendants allege:

29. That no case or controversy involving the defendants has been pleaded sufficient to confer jurisdiction upon this court.

As a fifth, separate and distinct defense to plaintiff's complaint, defendants allege:

30. That the plaintiff has an adequate remedy at law.

As a sixth, separate and distinct defense to plaintiff's complaint, defendants allege:

31. That the defendants, and each of them, are absolutely immune from liability for damages; or, in the alternative, that the defendants, and each of them, are not liable for damages to plaintiff since the acts of the defendants, and each of them, were done in good faith or based upon probable cause. Further answering, defendants allege that the statements made by Paul Roberts at the April 17, 1972, regular meeting of the City Council were absolutely privileged.

WHEREFORE, these defendants demand judgment dismissing the complaint with costs.

* * *

CITY OF INDEPENDENCE PERSONNEL ACTION FORM

NATURE OF ACTION (CHECK ONE) NUMBERS IN PARENTHESIS INDICATE THE ITEMS BELOW TO BE FILLED OUT FOR EACH ACTION

___ TEMPORARY (1,2,4,5,6) ___ CERTIFICATION (1,2,3,4,5,6) ___ SALARY CHANGE (1,2,3,4,5,6) ___ LAY-OFF (1,2,3,5,6) ___ RESIGNATION (1,2,3,5,6) AND COPY OF RESIGNATION

___ PROVISIONAL (1,2,4,5,6) ___ PROMOTION (1,2,3,4,5,6) XX DISMISSED (1,2,3,5,6) ___ SUSPENSION W/O PAY (1,2,3,5,6)

___ PROBATIONARY (1,2,4,5,6) ___ DEMOTION (1,2,3,4,5,6) ___ TRANSFER (1,2,3,4,5,6) ___ LV. OF ABSENCE W/O PAY (1,2,3,5,6)

1. NAME George D. Owen

2. REQUESTED EFFECTIVE DATE April 19, 1972

3. PRESENT — TITLE Police Chief; SALARY RANGE NO. 57; STEP NO. F; AMT. $ 1387; DEPARTMENT Police Department

4. PROPOSED — TITLE; SALARY RANGE NO.; STEP NO.; AMT. $; DEPARTMENT

5. EXPLANATION OF ACTION AND/OR STATEMENT OF DUTIES TO BE PERFORMED. (IF TEMPORARY, SHOW EXPIRATION DATE)

Terminated under the provisions of Section 3.3(1) of the City Charter

24.0 Reg
32.0 CB
360.

5-22-73
P.S. REQD
E + I
SW

6. REQUEST OF DEPARTMENT HEAD

SIGNED: _____ DATE: April 18, 1972

APPROVALS

PERSONNEL DIRECTOR _____ FINANCE DIRECTOR _____ CITY MANAGER _____

PLAINTIFF'S EXHIBIT NO. 2 - PERSONNEL ACTION FORM TERMINATING PLAINTIFF OWEN

PLAINTIFF'S EXHIBIT NO. 3 - LETTER, PLAINTIFF TO CITY MANAGER, APRIL 15, 1972

(SEAL) CITY OF INDEPENDENCE
Missouri 64050
103 North Main Street
Telephone (816) 836-8300
George D. Owen
Chief of Police
April 15, 1972

Mr. Lyle Alberg, City Manager
City of Independence, Missouri
103 North Main
Independence, Missouri

Sir:

As Director of Police and as Chief of Police of the City of Independence, I believe that you contemplate and may attempt to relieve me or force me out of office. This is occasioned by the fact that you have demanded my resignation which I have declined to submit. Further your attitude thereafter leads me to that belief. I have requested that you afford me a charge and specification of charges in writing and that I be granted a public hearing and a right to be represented by counsel.

My counsel, Lyman Field and Rufus Burrus, have advised me that even though the City Charter may give you authority to relieve me, they also say you cannot do so without granting me my constitutional rights of due process, which includes a written charge and specifications, together with a right to a public hearing and to be represented by counsel and to cross-examine those who may appear against me.

You are reminded, further, that I have given a lifetime to Police service and more than five years to the Independence Department. Further, you know that many civic and service organizations of Independence have at various times expressed confidence and praise of me and the Police Department.

You also know that the citizens and taxpayers of the City have given their vote of confidence of my administration of the Police Department by giving a great majority for the issuance of general obligation bonds in the amount of $2,000,000.00 for the construction of a police headquarters.

In spite of your recent investigation and your public statement given to the public press, your relief and discharge of me without a full public hearing upon written charges will leave in the minds of the public and those who might desire to have my services, a stigma of personal wrongdoing on my part.

Such action by you would be in violation of my civil rights as granted by the Constitution and Congress of the United States and you would be liable in damages to me. Further it would be in violation of the Missouri Administrative Procedure Act.

May I have an expression from you that you do not intend to relieve me or in the alternative give me a written charge and specifications of your basis for your grounds of intention to relieve me and to grant me a public hearing with a reasonable opportunity to respond to the charge and a right to be represented by counsel.

Respectfully,

PLAINTIFF'S EXHIBIT NO. 7 - PERTINENT EXCERPT FROM MINUTES OF REGULAR COUNCIL MEETING OF APRIL 17, 1972

REGULAR MEETING

APRIL 17, 1972

Bill No. 3463 entitled,

"AN ORDINANCE DECLARING THE RESULTS OF THE GENERAL CITY ELECTION HELD IN THE CITY OF INDEPENDENCE, MISSOURI, ON APRIL 4, 1972, AND AUTHORIZING AND DIRECTING THE CITY CLERK TO ISSUE ELECTION CERTIFICATES TO THE ELECTED CANDIDATES"

was given its first reading by title.

Bill No. 3464 entitled

"AN ORDINANCE DECLARING THE RESULT OF THE SPECIAL CHARTER AMENDMENT ELECTION HELD ON TUESDAY, APRIL 4, 1972, RELATIVE TO THE IMPLEMENTATION OF A PRIMARY ELECTION PRIOR TO THE BIENNIAL REGULAR CITY COUNCILMANIC ELECTIONS"

was given its first reading by title.

Bill No. 3465 entitled,

"AN ORDINANCE PROVIDING FOR THE CONSTRUCTION OF SIDEWALKS ON BOTH SIDES OF NOLAND ROAD FROM COLLEGE TO U.S. HIWAY 24, BY PAYING TO JACKSON COUNTY THE SUM OF $10,200 FOR CONSTRUCTION OF SAID SIDEWALKS AS SET FORTH IN THE

CHANGE ORDER #17 TO JACKSON COUNTY PROJECT #2010 AND BY PAYING TO SAID COUNTY THE SUM OF $800.00 FOR ENGINEERING FEES APPORTIONED TO SAID SIDEWALK CONSTRUCTION AND DECLARING AN EMERGENCY"

was given its first and second readings by title and placed on final passage. The question was asked, shall the bill pass? On roll call, the vote was: Ayes - Councilmen Maxwell, Bonville, Lamb, McGraw, Roberts, McQuinn and Mayor Weeks. Noes - none. Absent - none. The Mayor declared the bill passed.

Councilman Roberts read a prepared statement concerning the investigative report on the activities of the Chief of Police, certain Police officers and activities of one or more other City officials. Councilmen Roberts and McQuinn made a motion that the City Council instruct the City Manager to immediately make available to the news media, access to copies of all the twenty-seven voluminous investigative reports, the statements and attachments therewith; that copies of the reports be turned over and referred to the Jackson County Prosecuting Attorney for presentation to the next Grand Jury; and the City Council recommends to the City Manager that he take all direct and appropriate action permitted under the Charter against such persons as are shown by the investigation to have been involved in illegal, wrongful or gross inefficient activities brought out in the reports and that the investigation be completed. Councilman Bonville said he would not be in favor of releasing the information to the news media until such time as the entire Council could sit down and study the contents. He said he felt a study and decision should be made before the report is made public, otherwise the City could well be placed in a position of being libel. [sic] Councilman McGraw pointed out that a meeting of the

Council had been called some few days hence by the Mayor and the City Manager at which time the City Manager gave a statement which was released to the press and also indicated to the Council members that appropriate action would soon be taken. Councilman McGraw asked if other meetings had been held in which all the Council members had not been notified. Councilman McQuinn explained that it had not been an announced meeting that was held this morning (April 17, 1972), but that four Councilmen were in attendance for the purpose of considering immediate action to be taken on this very serious matter. Councilman Lamb voiced his opinion that the information be released to the public and the news media at once to dispel any thought that an attempt was being made to withhold the findings of the investigation. Councilman Maxwell affirmed his confidence in the City Manager and the plan under which he has set to follow through on this serious situation. He said that straightforward steps for correction need to be taken and that it is difficult to believe that the City has been a victim of such a circumstance. Councilman Bonville further explained that the matter should be legally checked out by our Law Department in order that the City not be held liable for defamation of character or any other damage; that he is not wishing to hide the facts, but to allow time for all precautionary measures to be taken. Councilman McGraw reiterated that a matter of this gravity should have been brought before the entire Council inasmuch as the City is represented by seven elected officials. Councilman Bonville asked City Counselor James S. Cottingham if the City would be placed in jeopardy of a lawsuit if the report is made available to the press at this time. Mr. Cottingham explained that there are a number of charges taken from various witnesses in which both accusations and evidence were induced and that if those charges of wrongdoing were not maintained and were printed in the news, there could be some action, not against the City, but against

individuals who gave the testimony. He said the City does have governmental immunity in this area and has the right to make inquiry and to investigate any department head or department within the City and neither the Council nor the City as a municipal corporation can be held liable for libelous slander. Councilman Lamb asked if the assumption is made that the City Manager has the right to take whatever action he deems necessary under a time schedule as he has set. Councilman Roberts replied that the motion is not specific as to the exact time for the City Manager to take the action mentioned, but that the motion's intent would take care of the matter. On vote, the motion carried with Councilman McGraw abstaining.

Councilmen McGraw and Lamb made a motion to approve the date of Monday, May 1, 1972 at 8:00 P.M. for the bid opening for the Blackburn School Park Development. Upon vote, motion carried.

Noted by the council was the approval that had been given for a total expenditure of $14,089.85 for a twelve month period, expiring 10/31/72 from Koppers Company, Inc. As of April 12, 1972 purchase orders had been issued in the total amount of $14,255.40 ($165.55 above the Council approved amount). A request for a new price agreement will be made at once.

At 8:09 P.M., Councilmen Lamb and McGraw made a motion to adjourn to the Memorial Building to meet in Adjourned Session as soon as possible after 8:00 P.M. for the Inauguration cermony. Upon vote, motion carried.

/s/ (Illegible)
Presiding Officer of the City Council of the City of Independence, Missouri.

ATTEST:
/s/ Bruce Lawrey
City Clerk

PLAINTIFF'S EXHIBIT NO. 8 - STATEMENT MADE APRIL 17, 1972 BY COUNCILMAN PAUL ROBERTS

On April 2, 1972, the City Council was notified of the existence of an investigative report concerning the activities of the Chief of Police of the City of Independence, certain police officers and activities of one or more other City officials. On Saturday, April 15th for the first time I was able to see these 27 voluminous reports. The contents of these reports are astoundingly shocking and virtually unbelievable. They deal with the disappearance of 2 or more television sets from the police department and signed statement that they were taken by the Chief of Police for his own personal use.

The reports show that numerous firearms properly in the police department custody found their way into the hands of others including undesirables and were later found by other law enforcement agencies.

Reports [s]how that narcotics held by the Independence Missouri Chief of Police have mysteriously disappeared. Reports also indicate money has mysteriously disappeared. Reports show that traffic tickets have been manipulated. The reports show inappropriate requests affecting the police court have come from high ranking police officials. Reports indicate that things have occurred causing the unusual release of felons. The reports show gross inefficiencies on the part of a few of the high ranking officers of the police department.

In view of the contents of these reports, I feel that the information in the reports backed up by signed statements taken by investigators is so bad that the council should immediately make available to the news media access to copies of all of these 27 voluminous investigative

reports so the public can be told what has been going on in Independence. I further believe that copies of these reports should be turned over and referred to the prosecuting attorney of Jackson County, Missouri for consideration and presentation to the next Grand Jury. I further insist that the City Manager immediately take direct and appropriate action, permitted under the Charter, against such persons as are shown by the investigation to have been involved.

I have been advised that the City Manager has requested the resignation of the Chief of Police but to date the Chief has not done so. It should be noted that many persons in the Police Department have come forward in the investigation of these matters and have cooperated in this investigation and their efforts are recognized and appreciated. Because these investigative reports and statements have not been available to the news media, I respectfully move as follows:

I move first that the Council instruct the City Manager to immediately make available to the news media access to copies of all the 27 voluminous investigative reports and the statements and attachments therewith.

Second:

That copies of the investigative reports be turned over and referred to the Jackson County Prosecuting Attorney for presentation to the next Grand Jury.

Third:

The City Council recommends to the City Manager that he should take all direct and appropriate action permitted under the Charter against such persons as are shown by the investigation to have been involved in illegal, wrongful, or gross inefficient activities brought out in the investigative reports, and to complete the investigation.

DEFENDANT'S EXHIBIT NO. 8 - LETTER, BURRUS TO VERMILLION, DATED APRIL 26, 1972

Law Offices of
BURRUS AND BURRUS
Katz Building
203 North Main
Independence, Missouri
64050

Olney Burrus
Rufus Burrus

Telephone
CLifton 2-9050

Harvey Burrus

April 26, 1972

Mr. George Vermillion
Personnel Director
City of Independence
Municipal Building
Independence, Missouri

RE: George D. Owen

Sir:

As attorney for Chief of Police, and also deignated as Director of Police Department, I am requesting that the attempted action by the City Manager to terminate the term of office of Chief George Owen be certified to the proper board as an appeal from such action.

If you should take the position that no such appeal applies, you are requested to give the reasons for such a position.

Again, this is given to you as an appeal on behalf of Chief George D. Owen.

Respectfully,

/s/ Rufus Burrus
Rufus Burrus

RBB:sjc

DEFENDANT'S EXHIBIT NO. 9 - LETTER, GILLHAM TO BURRUS, DATED MAY 3, 1972

(SEAL) CITY OF INDEPENDENCE
Missouri 64050
103 North Main Street
Telephone (816) 836-8300
May 3, 1972

Mr. Rufus Burrus
Burrus and Burrus
Attorneys at Law
203 North Main Street
Independence, Missouri 64050

Dear Mr. Burrus:

This is in response to your letter dated April 26, 1972, directed to Mr. George Vermillion, Personnel Director of the City of Independence, Missouri, requesting that the termination of the employment of Mr. George D. Owen as Director of Police be "certified to the proper board as an appeal from such action"

This is to advise that there is no appellate procedure or forum provided by the Charter or ordinances of the City of Independence, Missouri, relating to the dismissal of Mr. Owen.

Very truly yours,

/s/ James L. Gillham
James L. Gillham
Assistant City Counselor for the City of Independence, Missouri

JLG:alr
cc: Mr. George Vermillion,
Personnel Director

OPINIONS, DECISIONS, JUDGMENTS AND ORDERS

The following opinions, decisions, judgments, and orders have been omitted in printing this appendix because they appear on the following pages in the appendix to the printed Petition for Certiorari:

Opinion and Judgment of the District Court, filed June 25, 1976 (as modified by order correcting clerical errors filed July 9, 1976) A46

Original Opinion and Judgment of Court of Appeals, filed August 15, 1977 A48

Prior Order of Supreme Court, filed June 26 1978 A79

Opinion of Court of Appeals on Remand, filed December 1, 1978 A1

ORDER OF COURT OF APPEALS DENYING REHEARING, FILED JANUARY 29, 1979

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

September Term, 1978

Nos. 76-1758 and 76-1799

George D. Owen,
Appellant/Cross-Appellee,

vs.

The City of Independence, Missouri, et al.,
Appellees/Cross-Appellants.

Appeals From the United States District Court for the Western District of Missouri.

The Court having considered petition for rehearing en banc filed by counsel for appellant/cross-appellee, George D. Owen, and, being fully advised in the premises, it is ordered that the petition for rehearing en banc be, and it is hereby, denied.

Considering the petition for rehearing en banc as a petition for rehearing, it is ordered that the petition for rehearing also be, and it is hereby, denied.

Five judges voted to deny the petition for rehearing en banc and Judges Heaney and Henley voted to grant the petition for rehearing en banc. Chief Judge Gibson did not participate in the consideration of the petition for rehearing with suggestions for rehearing en banc.

January 29, 1979